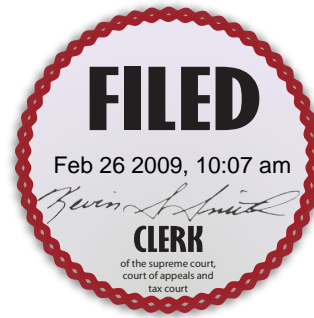


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BERNABE RAMIREZ,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A04-0807-CR-406

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0801-FD-83

February 26, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Bernabe Ramirez (“Ramirez”) pleaded guilty in Allen Superior Court to Class D Felony domestic battery. He was sentenced to a term of one and one-half years. Ramirez appeals and argues that the trial court failed to provide an adequate sentencing statement and that the sentence was inappropriate given the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On January 27, 2008, Ramirez was driving with his four-year-old son and his son’s mother. While driving, Ramirez grabbed his son’s mother by the neck and bit her nose, causing it to bleed.

On January 31, 2008, the State charged Ramirez with Class D felony domestic battery and Class D felony criminal confinement. On May 27, 2008, Ramirez pleaded guilty to Class D felony domestic battery without a sentencing recommendation. In exchange, the State dismissed the Class D felony criminal confinement charge. On June 30, 2007, following argument by Ramirez and the State regarding aggravators and mitigators, the trial court sentenced Ramirez to the advisory sentence of one and one-half years. Ramirez appeals.

Discussion and Decision

Ramirez argues that the trial court failed to provide an adequate sentencing statement. Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is ‘clearly against the logic

and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Id. at 491 (citations omitted).

A trial court can abuse its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. Id. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491.

At the sentencing hearing, Ramirez and the State offered argument to the trial court as to the aggravators and mitigators present. Ramirez offered as mitigating that he accepted responsibility for his actions, that he pleaded guilty, that he had a limited criminal history with two prior misdemeanors, and was currently employed. The State argued that despite pleading guilty, Ramirez has not taken responsibility for his actions and that the offense took place in front of his four-year-old son.

The trial court noted at the sentencing hearing that it took into account the mitigating circumstances set out by Ramirez and the aggravating circumstances set out by the State and found them equal. However, the trial court failed to mention, both at the sentencing hearing and in the sentencing order, which aggravators and mitigators it took

into account. Essentially, the trial court failed to enter a sentencing statement. In situations such as this, we have two options. Either we can remand to the trial court for clarification or we may review and, if necessary, revise the sentence under Indiana Appellate Rule 7(B). See Windhorst v. State, 868 N.E.2d 504, 506-07 (Ind. 2007).

A defendant may challenge his sentence under Indiana Appellate Rule 7(B) which provides: “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007).

The sentence under review is not inappropriate in light of the nature of the offense and the character of the offender. Ramirez grabbed his son’s mother by the throat and bit her nose while driving a vehicle containing his four-year-old son. The attendant risks to the passengers in the vehicle and to other vehicles on the adjacent roadway in this particular domestic battery could have called for a longer sentence. Concerning the character of the offender, we acknowledge Ramirez’s limited, non-violent criminal history and his guilty plea. However, the nature of the offense more than supports Ramirez’s advisory one and one-half year sentence. Ramirez’s sentence is not inappropriate based on the nature of the crime and the character of the offender.

Affirmed.

BAILEY, J., and BARNES, J., concur.